

The meeting opened at 6:35 p.m.

Present were: Brown (Chair); Magenheim (Clerk); Boness (Member); Rechisky and Wilson (Associate Members).
Member McDonough arrived at 7 p.m.

Petition No.: Z-14-30

Premises affected: 64 Summer Street

Petitioner: ZCR Realty Trust

Relief requested: variance from §7.9.4.7 & special permit §7.9 to subdivide a lot with an historic house into 2 & construct a new single family home on the new lot

Participating Members: Brown (Chair); Magenheim (Clerk); Boness (Member); Rechisky and Wilson (Associate Members, sitting in place of McDonough & Bargnesi).

Magenheim made a motion to continue the deliberation to 8/26/14 at 6:30 pm in the Community Development & Planning Conference Room, 1st floor, Town Offices, 36 Bartlet Street, Andover. Boness seconded the motion & the Board voted (5-0) to continue the deliberation.

Petition No.: Z-14-106

Premises affected: 290 Lowell Street

Petitioner: O'Brien Homes

Relief requested: variances §4.1.2 &/or §7.9.4.2 and for a dimensional special permit for historic preservation §7.9 to subdivide a lot with an historic structure into 2 lots, neither of which will meet area requirement & construct a new single family home on the new lot

Participating Members: Brown (Chair); Magenheim (Clerk); Boness (Member); Rechisky and Wilson (Associate Members, sitting in place of McDonough & Bargnesi).

Attorney Mark Johnson, representative for O'Brien Homes, informed the Board that at the IDR on 7-29-14 the Inspector of Buildings, Chris Clemente, raised an issue regarding the front setback. Therefore, they are requesting a continuance without opening the public hearing to the 9/4/14 meeting in order to re-advertize a request for a variance. Rechisky made a motion to continue without opening the public hearing to 9/4/14. Magenheim seconded the motion & the Board voted (5-0) to continue.

Petition No.: Z-14-108

Premises affected: 136 Chestnut Street

Petitioner: Callahan

Relief requested: variance §4.1.2 to construct a rear deck that won't meet rear setback requirement

Participating Members: Brown (Chair); Magenheim (Clerk); Boness (Member); Rechisky and Wilson (Associate Members, sitting in place of McDonough & Bargnesi)

Maureen Callahan, trustee & daughter of Mary Burke, resident at 136 Chestnut Street, presented the petition. The house is in the SRA district on a corner lot created by variance. Mrs. Callahan's 82-year old mother would like a 10'x16' rear deck to provide safer egress to the yard. The deck will not meet the minimum rear setback of 30', but will be 27' from the lot line. No one was present either in support or opposition. Mrs. Burke's other daughter is a direct abutter. Magenheim made a motion to waive the site view & close the public hearing. Boness seconded the motion & the Board voted (5-0) to waive the view & close the hearing. The Board then proceeded to deliberate.

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Brown reminded the Board that the non-conformity was created by variance; therefore the lot is not eligible for a special permit. The proposed deck will not encroach any further into the rear or side yard. Brown suggested that a variance could be granted & to re-affirm the findings in Decision No. 3587. Boness noted that there is no increase in the non-conformity. Rechisky, Wilson & Magenheim agreed. Magenheim made a motion to make a finding of a hardship, to reaffirm the findings of Decision No. 3587 & to grant a variance with the conditions that the deck is constructed as depicted on the plot plan and does not extend any closer to the rear/northerly lot line than any portion of the existing house. Boness seconded the motion & the Board voted (5-0) to grant the variance with conditions. Rechisky will write the decision.

Petition No.: Z-14-96

Premises affected: 90 Chandler Rd

Petitioner: Troxel

Relief requested: modification of comp permit #3289 &/or for a variance §4.1.2 to construct a rear deck that won't meet rear setback requirement

Participating Members: Brown (Chair); Magenheim (Clerk); Boness (Member); Rechisky and Wilson (Associate Members, sitting in place of McDonough & Bargnesi)

Mark Troxel, owner, presented his request for a modification of Comprehensive Permit #3289 &/or for a variance from Art. VIII, §4.1.2 to construct a 16'x18' open deck that will not meet the minimum rear yard depth requirement. The house, built in 2004, is in the SRB District and is part of the Greenwood Meadow development that was created by comprehensive permit, which allowed all of the lots & houses to be non-conforming. [Member McDonough arrived at 7 pm] Troxel stated that due to the small lot size, it is not possible to add a conforming deck. The Home Owners' Association wrote a letter supporting the petition. Troxel explained that the hardship is the non-conforming house & lot, as well as a hot back yard in the summer. The proposed rear setback is 3.5'. The Board discussed the comprehensive permit that allowed the creation of the non-conforming lots and houses. There were no questions or comments from the public. The Board discussed the limitation of 2700 sq ft for the houses & the decreased setbacks, including the rear setback to be no less than 20', per the comprehensive permit decision. Also considered is whether or not only the applicant to whom the comprehensive permit was granted has the right to modify it, or the subsequent homeowners. Chair Brown had asked Town Counsel for advice on this issue, but has not received a response yet. Brown feels that the Board cannot approve the variance but suggested that petitioner can withdraw without prejudice, with the option of considering at a later date once Town Counsel advises the Board. The Board considered the options, including continuing the hearing to allow time for Town Counsel advice. The sense of the Board is that a 3.5' rear setback is extreme and that the future enclosure of a deck would intensify the non-conformity. Troxel asked the Board to continue the hearing to the 9/4/14 meeting. Rechisky made a motion to continue the hearing to 9/4/14. Magenheim seconded the motion & the Board voted unanimously to continue the hearing to 9/4/14.

Petition No.: Z-14-97

Premises affected: 68 Summer Street

Petitioner: Giamusso

Relief requested: variance §4.1.2 &/or special permit §3.3.5 to construct a rear deck that won't meet rear setback requirement

Participating Members: Brown (Chair); Magenheim (Clerk); Boness; McDonough; Rechisky (Associate Member, sitting in place of Bargnesi). Alternate: Wilson

Michael & Martha Giamusso represented themselves in their request for a variance from Art. VIII, §4.1.2 &/or a special permit under Art. VIII, §3.3.5 to construct a rear deck that will not meet the minimum rear yard setback. The house is in

the SRB district. A corner of the proposed open deck (approx. 20 sf) would be 28' from the rear lot line. The deck will increase access from breezeway to patio/yard. There will be two sets of steps at the rear of the deck. The current design is for a square deck, which petitioners argue is more aesthetic. The lot is flat with no unusual conditions or topography. Rosemary McDonald, abutter at 2 Upland Rd., spoke in favor. Eloise Gier, 70 Summer St, also spoke in favor. Brown noted an email from Peter Morris, 112 Pine St., in favor. Mr. Giamusso argued that the subdivision of the lot in the 1940's created the odd angle at the rear of the lot. There being no other questions or comments from the public or the Board, McDonough made a motion to waive the site view & close the public hearing. Magenheim seconded the motion & the Board voted (5-0) to waive the view & close the hearing. The Board then deliberated.

McDonough noted the irregular rear lot line not being parallel to Summer St. Brown & Magenheim felt it is not unique, but characteristic to the neighborhood. Rechisky felt that making accommodations for aging homeowners & the minimal encroachment is acceptable. Boness views the lot as typical of Andover, not irregular, noting that an alternative design could accommodate furniture & maneuverability. Brown suggested, since it appears that there would not be at least 4 members voting in favor, to vote to re-open the hearing, to allow the petitioners to withdraw without prejudice if they wish. The Board voted unanimously to re-open the public hearing to allow the petitioners the option to request to withdraw their petition. Mr. Giamusso requested to withdraw without prejudice the petition. McDonough made a motion to allow the withdrawal without prejudice. Magenheim seconded the request & the Board voted (5-0) to allow the petition to be withdrawn without prejudice.

Petition No.: Z-14-103

Premises affected: 58 Lowell Junction Road

Petitioner: 58 Lowell Junction Road LLC

Relief requested: special permits §§3.1.3.C.23 & 9 to conduct a contractor's yard

Participating Members: Brown (Chair); Magenheim (Clerk); Boness; McDonough; Rechisky (Associate Member, sitting in place of Bargnesi). Alternate: Wilson

Aaron Becker, of GeoInsight, represented the applicant's request for special permits under Art. VIII, §3.1.3.C.23 & 9.4 to establish a contractor's yard. The lot is located in the Industrial A district. The proposed use will be a consolidation of the businesses currently operating on the two abutting lots. Becker reviewed the site plan, which will include a new office building and parking area. Mark Sanborn, owner of 46 & 58 Lowell Junction Road, informed the Board that #46 is now a contractor's yard. George Morey, of 60 Lowell Junction Road, stated that his business, Dumpsters-R-Us, has a staging area for empty dumpsters on the lot. Sanborn added that ABCO Rental & Storage also keeps empty ocean containers on site at 46 Lowell Junction Road between uses. The new office building will be used for these two companies. No new uses will be at 58 Lowell Junction Road. There will be no change in the number of daily truck trips (4-7). Sanborn noted that Deloury Construction will remain at 46 Lowell Junction Road, including the maintenance shop. There will be no increase in the number of dumpsters on site. The Board discussed the grading plan for #58, currently a wooded lot. Becker reviewed the area to be cleared on the site plan, noting that they have spoken with Conservation Commission regarding the wildlife overlay. Conservation voiced no concern. The Board also discussed the developed area & storm water regulations. Brown reminded the Board that they must make a finding under Section 9.4.2 that the proposed use is not unreasonably more detrimental to the established or future character of the neighborhood or town and that the community need is served by granting relief. The lot is served by public water and sewer and the proposed uses already exist in the neighborhood. There being no questions or comments from the public, Rechisky made a motion to waive the site view & close the public hearing. McDonough seconded the motion & the Board voted (5-0) to waive the view & close the hearing. The Board then proceeded to deliberate.

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Boness voiced concern about the expansion of the use classification in the area negatively impacting the R&D / office use in the area in the future. Brown finds that the proposal is not unreasonably detrimental and that the use is allowed by special permit. Boness suggested tying the special permit to the site plan & imposing conditions, to prevent further expansion without Board review. Boness voiced concern over the lack of depiction of the limits of clearing on the plan. McDonough made a motion to grant the special permit under Section 3.1.3.C.12 for a contractor's yard with conditions that it be in substantial conformance with the plans submitted and to find that the proposed use is not detrimental to the established or future character of the neighborhood or town and to make the required findings under Section 9.4.2; making the special permit specific to the applicant and not the land. The submitted plan is dated 7/10/14 prepared by GeoInsight. Brown added the condition that a plan depicting the 'general limit of clearing' shall be submitted prior to the decision being filed. Boness seconded the motion & the Board voted (5-0) to approve the special permit with conditions. Boness will write the decision.

Petition No.: Z-14-105

Premises affected: 89-93 Main Street

Petitioner: Second Chance Donuts, LLC

Relief requested: for a modification of Decision Nos. 3380, 3338, 3788 &/or for a special permit §3.1.3.C.12.b to operate a fast-food restaurant and for a variance §5.2.9.1 to erect a 2nd attached sign

Participating Members: Brown (Chair); Magenheim (Clerk); Boness; McDonough; Wilson (Associate Member, sitting in place of Bargnesi). Alternate: Rechisky

Attorney Mark Johnson represented the applicants' request for a special permit to operate a 'fast food' restaurant. The applicants (Dunkin Donuts) currently occupy the smaller space at the corner of the building and will move to the larger adjacent space. There are three prior decisions for the current space and/or tenant. The new location will have 26 interior and 10 outdoor seats. They will file another petition for the September meeting requesting the outdoor seating; it is not a part of the current petition. Bill Rianhard, of Second Chance Donuts, reviewed the proposed layout. The Board discussed the former residential use on the second floor, dumpsters, parking, foot traffic, delivery times/routes, and signage. There is no longer any residential use on the second floor. Design Review Board has reviewed the proposed signage. Brown noted that relief is required for the additional sign depicted on the plans. Brown suggested that rather than modifying the previous decisions as requested and since the location is changing, under a different name and with additional seating, it would be cleaner to issue a new permit. The Board agreed. There being no other questions or comments from the public or the Board, McDonough made a motion to waive the site view & close the public hearing. Magenheim seconded the motion & the Board voted (5-0) to waive the view & close the hearing. The Board then proceeded to deliberate.

Boness urged the Board to make sure that deliveries are within the specified times (Tuesday/Friday 6-7 am) & ensure that the signs conform to the submitted plan; otherwise this is the right place & use. Magenheim made a motion to find that the use is not detrimental and to grant the special permit with conditions, incorporating the 6-7 am delivery time; to deny the modification as moot and to grant the variance from 5.2.9.1 allowing 2 flat & 1 blade signs in accordance with the plan. Boness seconded the motion & the Board voted (5-0) to grant the special permit & variance with conditions. Brown will write the decision.

Petition No.: Z-14-17

Premises affected: 15 County Road

Petitioner: South Andover Development

Relief requested: variance §4.1.2 &/or special permit §§3.3.3, 3.3.5, 3.3.7 to raze & rebuild a single family dwelling that will not meet dimensional requirements

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Participating Members: Brown, Magenheim, Wilson, Rechisky

Gerry Welch, principal of South Andover Development, submitted a hand-written request to continue the public hearing to 9/4/14. The Board noted that the current extension to take action expires on 10/2/14. Brown reminded the Board that the public hearing first opened in March, has been continued several times & at one meeting no one appeared to represent the petition. Neither has the Board received the information it has requested at previous meetings on this case. Rechisky made a motion to continue the public hearing to 9/4/14. Magenheim seconded the motion & the Board voted unanimously (4-0) to continue the hearing to 9/4/14.

Petition No.: Z-14-107

Premises affected: 8 Mayflower Dr

Petitioner: Naylor

Relief requested: variance §4.1.2 to construct a rear deck that won't meet rear setback requirement

Participating Members: Brown (Chair); Magenheim (Clerk); Boness; McDonough; Wilson (Associate Member, sitting in place of Bargnesi). Alternate: Rechisky

Ruth Naylor represented herself in her request for a variance to construct a rear deck that will encroach 7.5' into the minimum setback. The lot is on the corner of Mayflower Dr & Standish Circle. The house has 3 levels with a supporting beam that extends down the side of the house from front to back. The beam prevents addition of a deck on the side. Minimal changes are proposed: a window will become a door onto the proposed 11.5'x8' deck. The proposed rear setback will be 22.5'. Naylor submitted a letter of support from Mrs. Mintz, direct abutter. Naylor noted the abundance of natural screening between the abutting lots, as well as the rear abutting lot being higher than hers. James Souza, 3 Standish Circle, to the rear, asked for additional screening. The Board discussed screening & the deck height (3' above grade), as well as the topographical features of the subject lot: slopes up to rear. There were no other questions or comments from the public or the Board. Brown read Mrs. Mintz' letter of support. McDonough made a motion to waive a site view & close the public hearing. Magenheim seconded the motion & the Board voted (5-0) to waive the view & close the hearing. The Board then proceeded to deliberate.

McDonough voiced her opposition, citing the previous case on Summer Street that was denied. Wilson noted that this lot slopes & the previous case was not denied entirely. Brown pointed out that there are no alternatives for this deck due to structural limitations due to the house beams, adding that the hardship exists due to the structural constraints & slope of the lot. Further, the proposed deck is small. The lot is long & narrow. Wilson made a motion to grant a variance with the conditions that the deck be constructed in conformance with the plot plan submitted, it shall not exceed 8' from the house & additional screening can be decided between the neighbors. Magenheim seconded the motion. Boness added that the hardship also relates to the lot being on a corner, with 2 fronts, 1 side & 1 rear. Brown asked for a roll call. Voting in favor of the variance are Boness, Wilson, Magenheim, Brown. Voting against the variance is McDonough, (4-1). Magenheim will write the decision.

Petition No.: Z-14-109

Premises affected: 30 High Street

Petitioner: Weiss

Relief requested: variance §4.1.2 &/or special permit §3.3.5 to construct a rear deck that won't meet side setback requirement

Participating Members: Brown (Chair); Magenheim (Clerk); Boness; McDonough; Rechisky (Associate Member, sitting in place of Bargnesi). Alternate: Wilson

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John Weiss, owner, represented himself & his wife in their request to construct a rear deck. The lot is in the SRA district & the house was built in 1876. There was previously a 3-season porch in the location where the deck is proposed. It was damaged in 2010. Weiss submitted photos of the house. Due to the narrow lot, there is no alternative location for a deck. It will have the same size footprint as the 3-season porch (9'x12.5') with stairs, not encroaching any further into the side setback. It will be the same width as the house. Bob Flynn, contractor & resident at 27 Marland St., Andover, noted that the stairs in the photo are temporary. Boness noted the 4.5' side setback on the plot plan. There were no other questions or comments from the public or the Board. McDonough made a motion to waive the site view & close the public hearing. Magenheim seconded the motion & the Board voted (5-0) to waive the view & close the hearing. The Board then proceeded to deliberate.

The Board discussed the age of the house & that the proposed deck will not be any closer to the side lot line than the existing house. McDonough made a motion to grant a special permit with the condition that the deck conforms to all the documents submitted; that the deck will be no larger than the specified dimensions & no closer to the lot line than the existing house. Magenheim seconded the motion. The Board discussed using the existing house as the reference for the setback since the old house is not square. The Board then voted (5-0) to grant the special permit with conditions. Magenheim made a motion to deny the variance as moot. Boness seconded the motion & the Board voted (5-0) to deny the variance. Rechisky will write the decision.

Petition No.: Z-14-110

Premises affected: 11 Bartlet Street

Petitioner: King's Subs & Pizza

Relief requested: special permit §3.1.3.C.12.b to allow the continued operation of a fast-food restaurant under new ownership

Participating Members: Brown (Chair); Magenheim (Clerk); Boness; McDonough; Rechisky (Associate Member, sitting in place of Bargnesi). Alternate: Wilson

Nick Macheras, 266 Chandler Rd, Andover, is the prospective new owner of this existing business. He is requesting a special permit from Art. VIII, Section 3.1.3.C.12.b to continue the operation of a fast-food restaurant. The current business has been in operation for several decades and does not have a special permit. There will be no changes to the exterior of the business. They will operate from 11 am – 11 pm and have 36 seats. There will be parking for delivery drivers. Macheras has spoken with the Health, Fire & Building Divisions. There were no other questions or comments from the Board or the public. Rechisky made a motion to waive the site view & close the public hearing. Magenheim seconded the motion & the Board voted (5-0) to waive the view & close the hearing. Boness made a motion to make the requisite findings & grant the special permit to King's Subs & Pizza, LLC with daily operational hours from 11 am – 11 pm. Rechisky seconded the motion & the Board voted (5-0) to grant the special permit. McDonough will write the decision.

Approval of Minutes

Brown asked to continue the approval of the 7/10/14 & 7/24/14 minutes to the 8/26/14 meeting in order to incorporate Brown's revisions.

There being no other business of the Board, McDonough made a motion to adjourn the meeting at 10:10 pm. Magenheim seconded the motion & the Board voted unanimously to adjourn the meeting at 10:10 p.m.